

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9090 of 1991

with

SPECIAL CIVIL APPLICATION No 9111 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
SHARIF MIYAJI NANDOLIYA (MUKHI)

Versus

STATE OF GUJARAT

-----  
Appearance:

MS KUSUM M SHAH for Petitioners

MS SIDDHI TALATI for Respondents

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

ORAL JUDGEMENT

1. As common questions of facts and law are involved in these petitions, the same are being taken for hearing together and are being disposed of by this common order.

2. The facts of the case are taken from Sp. C.A. No.9090/91. Reply to these special civil applications have not been filed by the respondents, and as such, the averments made therein stand uncontroverted.

3. The petitioners are the resident of Village Badargad, Taluka Palanpur, District Banaskantha. On 17th July, 1985 at the aforesaid village, a public auction was held for disposal of 46 plots of Gamtal, in which the petitioners participated. The bid of the petitioners for the plots were accepted and the sale in their favour was confirmed by the Taluka Development Officer under its order dated 17th July, 1985. All the petitioners paid the bid price and were put in possession and issued a Sanad for their respective plots. The petitioners averred in this special civil application that they have almost fully constructed buildings on the plots allotted to them. Some of the petitioners have constructed houses upto plinth level and all the petitioners are still in possession and occupation of the plots allotted to them at the auction held on 17th July, 1985. At the same auction, the respondents No. 7, 8 and 9 in this special civil application were allotted six plots being plots No. 5 to 10. Similarly one Gulamali Rajebhai Manashia was allotted plots No. 1 to 4. The respondent No.6 herein, Valibhai Doshanbhai Nandoliya, after lapse of 4 years filed Land Appeal No.11 of 1989 before the Deputy Collector, Palanpur for setting aside the sale of four plots made in favour of Gulamali Rajebhai Manashia at the said auction. Another appeal has been filed by the very person for setting aside sale of six plots at the auction to the respondents No.7, 8 and 9. The petitioners stated that in those appeals no prayer has been made for setting aside of the order of the T.D.O. dated 17th July, 1985 confirming the sale of the plots in favour of the petitioners. The Dy. Collector vide its order dated 30th March, 1990 not only allowed both the appeals, but also set aside auction sale and order of T.D.O. dated 17th July, 1985 confirming sale of all the 46 plots including the sale of plots to the petitioners. The petitioners averred that they were not made party to those appeals nor they were knowing of the said proceedings.

4. Gulamali Rajebhai preferred an appeal against the aforesaid order of the Dy. Collector to the Collector. Similarly, the respondents No. 7, 8 and 9 also preferred appeals against the aforesaid order of the Dy. Collector. The appeal of Gulamali Rajebhai was dismissed vide order dated 23rd August, 1990 and further order has been made for resumption of the land of 1 acre as it is

not required as Gamtal. The petitioners submitted that the appeal filed by the respondents No. 7, 8 and 9 was not heard and decided. Gulamali Rajebhai Manashia being aggrieved by the decision of the Collector dated 23rd August, 1990 filed revision application No.64/90 before Special Secretary, Revenue Department, State of Gujarat. Through the respondents No.7, 8 and 9 the petitioners came to know of the orders of the Dy. Collector and Collector and they immediately enquired in the matter and obtained certified copies of judgments of Dy. Collector and Collector in the appeals. Thereupon they filed revision application No.36/91 before the Special Secretary (Appeals), Revenue Department, State of Gujarat on 6-4-1991 and prayer has been made for setting aside of both the orders of the Dy. Collector and the Collector. In revision application, the respondents No. 7, 8 and 9 were also joined as party.

5. The State Government decided the revision application of Gulamali Rajebhai Manashia without fixing any date of hearing on the revision application filed by the petitioners. The revision application of Gulamali Rajebhai Manashia was rejected vide order dated 18th June, 1991, but the petitioners were not knowing of this order. After having come to know about the aforesaid order, they submitted an application on 12th August, 1991, to the Special Secretary to hear them on their revision application but under the letter dated 4-10-1991 they have been replied that the revision application of Gulamali Rajebhai has already been decided and no fresh decision is to be taken against the same order in the revision application filed by the petitioners. Hence, this special civil application before this Court.

6. The counsel for the petitioners, Ms. K.M. Shah, raised manifold contentions during the course of arguments, but it is not necessary to advert to all those contentions as in my view, these writ petitions deserve acceptance only on the ground that the State Government has not heard the petitioners in the revision application.

7. The counsel for the respondents has not controverted the facts stated in this special civil application.

8. The petitioners have their independent right of revision before the Government and their revision application has to be decided on merits after giving them notice and opportunity of hearing. Merely because the revision application filed by Gulamali Rajebhai Manashia

has been dismissed, I fail to see how far the respondent-State is justified to say that no fresh decision has to be taken against the same order in the revision application filed by the petitioners. The petitioners and that person may have different cases and the petitioners may be able to satisfy the revisional authority that the setting aside of the sale of the plots to them is illegal and arbitrary. The petitioners' revision application could not have been met with the fate of the decision of the revision application of Gulamali Rajebhai Manashia. The reason given by the respondent-State under its letter dated 4-10-1991 not to decide the revision application of the petitioner after hearing them in the matter is wholly arbitrary and unjustified.

9. In the result, both these special civil applications succeed and the letter of the respondent-State dated 4-10-1991 is quashed and set aside. The office of the State Government to which the powers of revision are delegated is directed to decide the revision application filed by the petitioners in the matter on merits after hearing the petitioners or their representative. The matter is old one and it is expected of the revisional authority to decide the revision application of the petitioners within reasonable time, say within six months from the date of receipt of certified copy of this order. Rule made absolute in the aforesaid terms with no order as to costs.

\*\*\*\*\*

zgs/-